

REMARKS

Applicant is in receipt of the Office Action dated January 10, 2005. Claims 1–36 are pending in this application. By this Amendment, claim 37 is canceled.

In the outstanding Office Action, a Restriction Requirement was made as between four different inventions:

- I. Claims 1–9, allegedly drawn to a nougat, classified in class 426, subclass 656.
- II. Claims 10–16 and 28–36, allegedly drawn to food product containing nougat, classified in class 426, subclass 656.
- III. Claims 17–27, allegedly drawn to method of making a nougat alone or with a product containing said nougat, classified in class 426, subclass 656.
- IV. Claim 37, allegedly drawn to a method of dieting, classified in class 514, subclass 560.

Applicant provisionally elects group I, claims 1–9, with traverse. Consequently, claims 10–36 are labeled above as “withdrawn.”

While the indicated claim groups may be independently patentable, it is respectfully submitted that the subject matter of independent claims 1, 7, 9, 10, 16, 28 and 31–36 is sufficiently related that a thorough search for the subject matter of any one independent claim would encompass a search for the subject matter of the remaining independent claims 17, 20, 24 and 25. This is reinforced by the fact that the first three remaining groups of claims are all classified in the same class and subclass. See Office Action, page 2, paragraph 1 (groups I, II and III each classified in class 426, subclass

656). Thus, it is respectfully submitted that the search and examination of the entire application could be made without serious burden.

MPEP § 803 states that “[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.” (Emphasis added).

It is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to the Applicant and duplicative examination by the Patent Office. Thus, Applicant provisionally elects group I, claims 1–9, with traverse. Withdrawal of the restriction requirement is respectfully requested.

If the Examiner has any questions or suggestions for placing the application in better form, the Examiner is requested to call the undersigned.

Respectfully Submitted,



STEVEN L. NICHOLS
Reg. No. 40,326
Rader, Fishman & Grauer, PLLC
River Park Corporate Center One
10653 S. River Front Parkway, Suite 150
South Jordan, UT 84095
(801) 572-0185

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